

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

ORACLE AMERICA, INC., a Delaware corporation,

Plaintiff,

vs.

SERVICE KEY, LLC, a Georgia limited liability company; ANGELA VINES; DLT FEDERAL BUSINESS SYSTEMS CORPORATION, a Delaware corporation; and DOES 1–50,

Defendants.

Case No: C 12-00790 SBA

**ORDER GRANTING PLAINTIFF'S
MOTION TO STRIKE
DEFENDANT DLT-FSB'S
COUNTERCLAIMS AND
AFFIRMATIVE DEFENSE**

Dkt. 158

On February 20, 2013, Plaintiff Oracle America, Inc. (“Oracle”) filed the instant motion seeking to strike the first, second, third, fourth and fifth counterclaims for relief and the twelfth affirmative defense in DLT Federal Business Systems Corporation’s (“DLT-FSB”) Answer to Plaintiff’s Second Amended Complaint and Counterclaims, filed on February 8, 2013, Dkt. 155. See Dkt. 158. Although opposition briefs are typically due two weeks after a motion is filed, see Civ. L.R. 7-3(a), Oracle granted DLT-FSB’s request for a two-day extension, see Zipes Decl. Ex. B, Dkt. 166-3. Despite this extension, DLT-FBS failed to file any opposition.

This Court’s Standing Order is clear: “The failure of the opposing party to file a memorandum of points and authorities in opposition to any motion shall constitute a consent to the granting of the motion.” See Dkt. 31 at 5. That notwithstanding, the Court finds that Oracle’s motion is well taken. DLT-FSB filed its new counterclaims and affirmative defense after the deadline previously set by the Court. See Dkt. 59. However, DLT-FSB failed to seek leave to modify the Court’s scheduling order based on a showing

1 of good cause. See Johnson v. Mammoth Recreations, Inc., 975 F.2d 604, 607-08 (9th Cir.
2 1992). As such, DLT-FSB's unauthorized submission of new counterclaims and an
3 affirmative defense is improper. Accordingly,

4 IT IS HEREBY ORDERED THAT Plaintiff's Motion to Strike Defendant DLT-
5 FSB's Counterclaims and Affirmative Defense is GRANTED. This Order terminates
6 Docket 158.

7 IT IS SO ORDERED.

8 Dated: April 11, 2013


SAUNDRA BROWN ARMSTRONG
United States District Judge